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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,651	04/02/2004	Larry M. Leone	059042.000002	1051

7590	10/18/2007
James E. Bradley Bracewell & Giuliani LLP P.O. Box 61389 Houston, TX 77208-1389	

EXAMINER	
PALO, FRANCIS T	

ART UNIT	PAPER NUMBER
3644	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/816,651	Applicant(s) LEONE ET AL.	
	Examiner Francis T. Palo	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Remarks

Election/Restrictions

Applicant's **election** without traverse of Group-I (claims 1-6 and 9) in the reply filed on 12/8/06 is acknowledged.

Claims 7, 8, 10 and 11 are **withdrawn** from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Drawings

The drawings are objected to under 37 CFR 1.83(a).

The drawings must show every feature of the invention specified in the claims (to better facilitate the specifics of the claimed plumbing).

Therefore, the return hose originating and terminating as claimed must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures.

Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a), as obvious over **Taylor** (US 2002/0059751 A1).

Art Unit: 3644

Regarding **claims 1 and 2**:

Taylor '008 teaches a modular structure as recited in the preamble, wherein features readable on the instant base, membrane, substrate and naturally-appearing stone as claimed, are co-formed in the structure of Taylor rather than separate components as in the instant structure.

Specifically, the structure of Taylor is modular because it is capable of use in a landscape with another water feature such as itself with or without the ornamental pump (17). Further, Taylor teaches a base (12) in figure-2, having a body with perimeter walls (13), top side (18;therefrom), underside and a generally centrally located depression (15), as claimed.

Said base of Taylor or the exterior of Taylor is readable as a moisture-resistant membrane, a moisture- and flex-resistant substrate and Taylor is depicted as imitating natural-appearing stone, as claimed.

Taylor discloses the broadly claimed invention except for the multi-component recitation; it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the base of Taylor with the membrane, substrate and stone as claimed, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

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Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, Applicants claim a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396).

Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Art Unit: 3644

Regarding **claim-3**:

The discussion above regarding claim-1 is relied upon.

In consideration of the drawing objection as discussed above, Taylor depicts a plumbing system layout readable as claimed; that is, reading the water receptacle (16) as depicted in figure-2 of Taylor as the claimed return hose and the supply hose (23) and overflow (20) as the respective supply and exterior port as claimed.

Regarding **claims 4 and 5**:

The discussion above regarding claim-1 is relied upon.

The structure of Taylor is capable of the sufficiency as claimed and thickness as claimed.

Regarding **claim-6**:

The discussion above regarding claim-1 is relied upon.

The structure of Taylor imitates natural stone, and due to the integral construction of Taylor, it would have been obvious to make separate the decorative feature and imbed as claimed, for the same rationale as put forth in the discussion of claim-1 above.

Regarding **independent claim-9**:

The discussion above regarding claim-1 is relied upon for the features common to the independent claims..

Taylor teaches ready assembly and disassembly (two bolts and a hose are apparent in the figures for removing the hand pump (17), and molding in two halves is taught in column-2 at line-35 thereabout) as recited in the preamble.

Taylor further teaches legs (10) to support the structure and give it a transportable character, and sloped areas (25) in the embodiment depicted in figure-4, as claimed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Horwood '008 as modified by Rynberk '690 (the rocks) or Gildea '776 (ornamentation) or Taylor '699 (rock appearance) could have been relied upon for prior art.

Amaral '854 could have been relied upon for the Styrofoam base and cladding teaching.

August '406 teaches insulation between a double skin.

Hensman '237 teaches a raised garden or pond or similar structure which can be extended, dismantled or transported with ease, and a waterproof lining.

Taule '473 teaches a base and insert (liner).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644